

**BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI**

INTERNATIONAL ASSOCIATION OF	)	
FIREFIGHTERS, LOCAL 2665,	)	
PROFESSIONAL FIRE FIGHTERS OF	)	
ST. LOUIS COUNTY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Public Case No. R 86-010
	)	
CITY OF FRONTENAC,	)	
	)	
Respondent.	)	

**JURISDICTIONAL STATEMENT**

This case appears before the State Board of Mediation upon the filing by International Association of Firefighters, Local 2665, of a petition for certification as public employer representative of all non-supervisory employees of the Frontenac fire department. A hearing was held on April 3, 1986, in St. Louis, Missouri, at which representatives of Local 2665 and the City were present. The case was heard by State Board of Mediation Chairman Mary Gant, employer member Norman Litz, and employee member James O'Mara. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525, RSMo. 1978.

At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

The Frontenac fire department consists of fourteen full time employees, namely: a fire chief, an assistant fire chief, three captains, and nine privates. All employees work

from the department's only fire station. The fire station is a two bay engine house with living facilities, including a bunk room, living room, kitchen and dining area. All personnel have equal access to the various sections of the fire station. The fire chief works a five day, forty hour week from 7:00 a.m. until 3:30 p.m. The assistant chief works twenty-four hour shifts, alternating among the three platoons which are designated A, B and C. Each platoon or shift consists of a four man crew which includes the captain, and three privates, who work alternating twenty-four hour shifts. The captains earn approximately \$3,000.00 more per year than do privates.

The twenty-four hour shifts worked by the captains and privates are structured by what all refer to as the "daily routine." This routine is posted and provides duties of the men from 7:00 a.m. until 4:00 p.m. The captains are charged with seeing that the daily chores are performed and that the daily log is completed indicating that the duties have been performed. Daily duties include equipment maintenance, training, general cleaning chores and grass-cutting. The captains perform all of the duties along with the other employees. The record indicates that the privates require no direct supervision in performing these duties.

The captains play no role in the hiring of new employees. The fire chief has full power to interview and test all new applicants when a vacancy occurs. Once the fire chief decides who shall be hired, the fire chief seeks approval of the police and fire board of the city. Captains are not involved in transferring an employee from one shift to another. If a private is ill or has to leave because of an emergency, the captain will call another employee to fill in. The captain, however, has no power to grant leave without the permission of the chief or the assistant chief. Vacation is determined by seniority with the chief making final determinations. Further, captains play a limited role in the promotion process of other employees. At the request of the chief, a captain occasionally will complete an evaluation form concerning an employee. However, evidence adduced at the hearing indicates that the captains evaluation plays only a

small part in the chief's decision in that test scores, seniority and education weigh heavily in determining whether a promotion should be made. Finally, although a captain is responsible for reporting disciplinary infractions to the chief or assistant chief, there is no evidence that a captain has ever been involved in any disciplinary action.

When the fire alarm sounds, the captain and the three privates man the equipment to which they have been preassigned by notice posted at the firehouse. Once the alarm sounds, the privates are not directed by the captains, but instead automatically respond to their assigned equipment based on their training and experience. The captain usually rides in the front seat next to the operator of the vehicle, directing the driver to the scene of the fire. Upon the arrival at the fire, the captain directs the privates, assessing the severity of the fire and making tactical decisions concerning fighting the flame. If the fire is serious, both the chief and assistant chief are notified by paper if they are off duty. Once on the scene, the chief or assistant chief takes command. The captain continues to work along with the firefighters in helping to extinguish the fire.

### **CONCLUSIONS OF LAW**

Local 2665 has petitioned to be certified as public employee representative of a bargaining unit comprised of all Frontenac fire department employees, excluding the chief and assistant chief. The City contends that the captains are supervisory employees and, therefore, should be excluded from the bargaining unit. The issue before the Board, therefore, is whether the captains are to be included in the appropriate bargaining unit. An appropriate bargaining unit is defined by Section 105.500 (1) RSMo. 1978 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest." However, the Board has consistently held that supervisors cannot be included in the same bargaining unit as the employees they supervise. St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, MO, Case No. 76-013 (SBM 1976); See Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d 581 (Mo.App. 1977). To determine the appropriate bargaining unit as it concerns the captains, the Board must determine whether the captains are in fact supervisors. In determining the supervisory status of employees within bargaining units, the Board has consistently examined the following factors:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees.
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters.
- (3) The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
- (4) The level of pay including an evaluation of whether the supervisor is paid for a skill or for supervision of employees.
- (5) Whether the supervisor is primarily supervising an activity or primarily supervising employees.
- (6) Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.

The City contends that based upon the above factors, the Frontenac fire department captains are supervisors. In short, the City asserts that because the captains are the only superior officers present during two-thirds of any shift, and are therefore in charge of certain activities and have the authority to direct the privates and report disciplinary problems, they exercise judgment sufficient to be considered supervisors. For the reasons set out below, the Board rejects the City's arguments.

The record clearly indicates that captains play no role in the hiring of new employees. Further, captains have no authority to effectively recommend the discharge, transfer, or discipline of employees. Concerning promotion, the record indicates that only occasionally will a captain submit an evaluation of another employee. That evaluation is only a minor factor considered in conjunction with the employee's test scores, seniority and education.

Finally, with respect to the direction of the privates, it is evident that a captain is in charge while at the firehouse or fire scene when a chief or assistant chief is not present. However, as stated in St. Charles Firefighters, Local 1921, v. City of St. Charles, Case No. 79-024 (SBM, 1979) merely being in charge is not enough to constitute having the authority to direct the work force. The responsibility must be substantial enough to make the employee a part of management, not a simply a leadsman or a straw boss. In the case before the Board, it is clear that the amount of independent judgment exercised by the captains in directing the work force is insufficient to ascribe to them supervisory status. Similarly, the captain's role at the fire scene rests largely on his skill and experience rather than on a need for the captain to be in a position to carry out the City's labor policy. Accordingly, the Board concludes that the captain's authority in relationship to the privates is analogous to that of a leadsman and not that of true supervisor.

In its brief, the City argues that including the captains in the bargaining unit would be an abuse of discretion, apparently citing a Jasper County Circuit Court decision involving the firefighters of the City of Joplin. In that case, the Circuit Court reversed the Board decision in which the Board held that the captains and lieutenants of the Joplin Fire Department were non-supervisory employees to be included in the bargaining unit. That Circuit Court decision, however, was overruled by the Missouri

Court of Appeals which held that the Board acted within its discretion in deciding that the employees were non-supervisory. See City of Joplin v. State Board of Mediation, 615 S.W.2d 613 (Mo. App. 1981). In view of the foregoing, the Board ruled that the captains do not possess the authority to be considered true supervisors and, therefore, are to be included in the appropriate bargaining unit.

### **DECISION**

It is the decision of the State Board of Mediation that an appropriate unit of bargaining employees is as follows: all employees of the Frontenac fire department excluding the chief and assistant chief.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the unit found appropriate, as early as possible, but not later than thirty days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to be represented for the purposes of exclusive recognition by Local 2665, Professional Fire Fighters of St. Louis County.

It is hereby ordered that the City shall submit to the Chairman of the State Board of Mediation, as well as to Local 2665, within fourteen days from the date of receipt of this decision on alphabetical list of names and addresses of employees in the unit

determined above to be appropriate who were employed during the payroll period immediately preceding the date of this decision.

Signed this 13th day of May, 1986.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant  
MARY L. GANT, Chairman

/s/ James O'Mara  
JAMES O'MARA, Employee Member

/s/ Norman Litz  
NORMAN LITZ, Employer Member